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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD D. FERRIS

Appeal 2007-2848
Application 10/765,106
Technology Center 1600

Decided: February 7, 2008

Before, DEMETRA J. MILLS, ERIC GRIMES, and
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Claim 1 is representative and reads as follows:

1. A putter type golf club including a club head having a ball striking face lying in a first plane and a shaft having an upper end and a lower end connected to the club head, wherein the improvement comprises:

an elongated handle having an upper edge and a lower edge, said handle being attached to said shaft and having a generally oval, cross-sectional shape along the entire handle between said upper edge and said lower edge;

said generally oval, cross-sectional shape of said elongated handle including a first rounded front edge and a second rounded rearward edge

defining a cross-sectional, length dimension of said handle; a first flat side surface and a second opposing flat side surface defining a width dimension of said handle; said cross-sectional, length dimension being perpendicular to said first plane of said ball striking face; said handle being further defined by said first rounded forward edge having a first radius and said second rounded rearward edge having a second smaller radius; said flat side surfaces gradually tapering closer, each to the other, in a forward to rearward edge direction; said upper edge of said handle including alignment indicia thereon, defined by at least a first alignment line in the direction perpendicular to the first plane of said ball striking face and a second alignment line on said upper edge of said handle, said second alignment line being perpendicular to said first alignment line, parallel to said first plane of said ball striking face; and wherein said first alignment line and said second alignment line intersect to form four angles.

Appellant requests reconsideration of our Decision entered Sept. 20, 2007 (“Decision”) in which we affirmed the Examiner’s final rejection of claims 1-15.

The request for rehearing is denied.

ISSUES

The following issue is raised by Appellant in his Request for Rehearing:

Whether the Board has erred in determining that claims 1, 2, 4 and 5 would have been obvious under 35 U.S.C. § 103(a) over Cacicedo in view of Bloom, Radakovich, and Takeuchi.

DISCUSSION

In the Request for Rehearing Appellant raises five alleged misapprehensions of the Board in our Decision of Sept. 20, 2007. We address each of the noted misapprehensions below.

Misapprehensions 1. and 2. Appellant argues that Takeuchi does not disclose four quadrant angles formed by two intersecting lines. (Rehearing 2-3.)

We are not persuaded by this argument. Takeuchi describes “great graduations at 45 degree intervals progressively from the reference graduation.” (Takeuchi, col. 2, ll. 56-57.) Such graduations are described to “confirm an alignment of at least one of the graduations with the club face.” (Takeuchi, col. 3, ll. 23-26; *see also* col. 4, ll. 65-66.) Figure 3, lines 5a and 6, clearly depicts four great graduations defining four angle quadrants. Pending claim 1 uses the transitional language “comprising” and thus does not exclude prior art including 45 degree graduations and smaller angle graduations, as in Takeuchi.

Moreover, Appellant’s argument fails to consider the relevance of the other cited references to the obviousness rejection. In particular, Radakovich discloses a sighting means for “attachment to a golf club for precise alignment of a golf club head to a golf ball for directing said golf ball to a designated target” and which contains “a demarcated $\frac{1}{4}$ sector” (Radakovich, col. 2, ll. 11-23.) In Figure 4, element 90 has an arrow member 92 and a cross-bar 94 (col. 5, ll. 34-38) which forms two quadrants on one half of the circular club. In Figs. 5 and 6, target arrow 46 demarcates the disk member with $\frac{1}{4}$ sector. (Radakovich, col. 2, ll. 49-54) The

sighting means of Radakovich Figure 5 thus also forms at least two quadrant angles on one half of the semi-circle. Both the graduations of Takeuchi and the sighting means indicia of Radakovich are oriented or aligned with the club face. Even if the great graduations of Takeuchi were for a different purpose than those of Radakovich, they would still meet the limitation of the alignment indicia of claim 1. A golfer could use the alignment indicia of Takeuchi for any purpose, including sighting the club face and ball to a target, as in Radakovich.

Misapprehension 3. Appellant argues there is a functional difference between the alignment lines claimed and those of Takeuchi. (Rehearing 4-5.)

We note that claim 1 does not set forth the function of the alignment indicia. Claim 1 recites that

said upper edge of said handle including alignment indicia thereon, defined by at least a first alignment line in the direction perpendicular to the first plane of said ball striking face and a second alignment line on said upper edge of said handle, said second alignment line being perpendicular to said first alignment line, parallel to said first plane of said ball striking face; and wherein said first alignment line and said second alignment line intersect to form four angles.

Thus claim 1 only requires a perpendicular orientation of the alignment lines, which is the exact same orientation disclosed by Takeuchi. Thus, even if the graduations of Takeuchi were for a different purpose than

those of Radakovich, they would still meet the limitation of the alignment indicia of claim 1. Therefore, we are not persuaded by this argument.

Misapprehension 4. Appellant argues that the four quadrants of Takeuchi do not “function the same or anywhere near equivalent to two intersecting lines.” (Rehearing 5.) Again, this argument of Appellant fails to consider the relevance of the combination of the cited references. Radakovich discloses in Figures 4 and 5, two intersecting lines that form at least two quadrants for sighting the club face and ball to a target. Takeuchi discloses great graduations aligned to the club face. (Takeuchi, col. 3, ll. 23-26; col. 4, ll. 65-66.) For this reason, it would have been obvious to one of ordinary skill in the art to modify the great graduations of Takeuchi to form two intersecting lines as in Radakovich. We stand by our decision that the fact that the graduations of Takeuchi do not intersect does not patentably distinguish the claimed alignment indicia from the prior art.

Misapprehension 5. Appellant argues that the Board’s application of *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) is improper. (Rehearing 5.)

Appellant argues that the indicia of Takeuchi merely aid a fabricator in securing a grip to a club by aligning element 2 relative to the club face to customize the club for a particular golfer’s swing. (Rehearing 6.) As previously indicated, even if the graduations of Takeuchi were for a different purpose than the alignment indicia of Radakovich, they would still suggest the limitation of the alignment indicia of claim 1 because the claimed

alignment indicia have the same structure suggested by the prior art. Appellant does not dispute that both the alignment indicia of Takeuchi and Radakovich are directly aligned to the club face.

Therefore we find no error in application of *KSR*, or the finding that the improvement claimed is no more than predictable use of prior art indicia elements of Takeuchi and Radakovich according to their established functions.

SUMMARY

The rejection of claims 1-15 is maintained and the rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REHEARING DENIED

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